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5 Attorneys for Plaintiff  
6 SAN FRANCISCO BAY AREA RAPID TRANSIT  
DISTRICT, a multi-county rapid transit district  
7 established and existing under the laws of California

8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO BAY AREA RAPID  
TRANSIT DISTRICT, a multi-county  
12 rapid transit district established and  
existing under the laws of California, for  
13 itself and for and in the name of the people  
of the State of California,

14 Plaintiff,

15 vs.

16 WILLIAM D. SPENCER, an individual;  
17 F.W. SPENCER & SON, INC., a  
California corporation; BRISBANE  
18 MECHANICAL CO., a California  
corporation; WILLIAM M. MCGAHAN,  
19 an individual; BRUCE R. BONAR, an  
individual; and DOES 1-25,

20 Defendants.  
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Case No. C 04 4632

**PLAINTIFF'S REQUEST FOR  
PERMISSION TO FILE OVERLENGTH  
MEMORANDUM IN OPPOSITION TO  
MOTION TO DISMISS; [PROPOSED]  
ORDER; AND DECLARATION OF  
DANIEL T. BALMAT**

**Date:** September 2, 2005  
**Time:** 10:00 a.m.  
**Courtroom:** Courtroom 10, 19th Floor  
**Judge:** Hon. Susan Illston

TO DEFENDANTS AND THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that plaintiff SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (“BART”) hereby requests that it be allowed to file a memorandum of points and authorities in support of its Opposition to Defendants’ Motion to Dismiss (the “Opposition”) that exceeds twenty-five (25) pages of text.

Civil Local Rules 7-3(a) and 7-4(b) provide that briefs or memoranda filed with opposition papers may not exceed 25 pages of text, except by order of the Court.

This allowance is necessary because although the Defendants raise myriad and complicated legal issues in the Motion to Dismiss, they support many of these arguments with only minimal elaboration and discussion, and often without citation of authority. See the Declaration of Daniel T. Balmat in Support of Plaintiff’s Request to File Overlength Memorandum (“Balmat Decl.”) ¶ 3 filed herewith. BART believes, however, that the Court will be better served by a more fulsome analysis of these issues, and has drafted the Opposition accordingly. *Id.*

BART has made diligent efforts to prepare the Opposition in compliance with the page limitations. Balmat Decl. ¶ 4. BART finds, however, that it can accurately, comprehensively, and effectively address the myriad and complex facts and legal arguments raised by Defendants

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1 in their Motion to Dismiss only by means of an over-length memorandum. *Id.* BART therefore  
2 requests approval to file a memorandum in excess of the applicable Rules, such memorandum not  
3 to exceed 30 pages.

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5 Dated: August 11, 2005

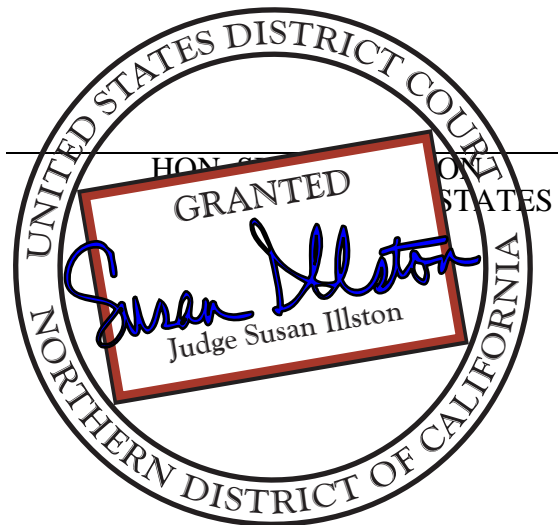
SQUIRE, SANDERS & DEMPSEY L.L.P.

6  
7 By: /s/

Daniel T. Balmat

8 Attorneys for Plaintiff  
9 SAN FRANCISCO BAY AREA RAPID  
10 TRANSIT DISTRICT

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12 **IT IS SO ORDERED.**



**DECLARATION OF DANIEL T. BALMAT**

I, DANIEL T. BALMAT, declare as follows:

1. I am an attorney at law admitted to practice in the State of California and before the United States District Court for the Northern District of California. I am an associate in the law firm of Squire, Sanders & Dempsey L.L.P. Our firm has been retained to represent the plaintiff SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (“BART”) in Case No. C-04-4632, *San Francisco Bay Area Rapid Transit District v. William D. Spencer et al.* I have personal knowledge of the facts stated below and, if called as a witness, could and would testify competently thereto.

2. I have been responsible for drafting and preparing BART’s Opposition to the Defendants’ Motion to Dismiss, to be filed on August 12, 2005.

3. The Motion to Dismiss involves intricate facts and raises myriad and complicated legal issues. Specifically, Defendants have made numerous legal arguments which they support with only minimal elaboration, and often without citation of authority. BART believes, however, that the Court is better served by a more complete analysis of these issues, and the Opposition is drafted accordingly.

4. BART has made diligent efforts to prepare the Opposition in compliance with the page limitations set forth by the applicable Rules of this Court. BART finds, however, that it can accurately, comprehensively, and effectively address the myriad and complex facts and legal arguments raised by Defendants in their Motion to Dismiss only by means of an over-length memorandum of points and authorities in support of the Opposition.

I hereby swear under penalty of perjury under the laws of California and the United States that the foregoing is true and accurate.

DATED: August 11, 2005

/s/  
\_\_\_\_\_  
DANIEL T. BALMAT

**PROOF OF SERVICE**

(Pursuant to Federal Law)

The undersigned certifies and declares as follows:

I, JOHN R. AGUILAR, am a resident of the State of California and over 18 years of age and am not a party to this action. My business address is One Maritime Plaza, Suite 300, San Francisco, California 94111-3492, which is located in the county where any non-personal service described below took place.

On August 11, 2005, a copy of the following document(s):

**PLAINTIFF'S REQUEST FOR PERMISSION TO FILE OVERLENGTH  
MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS;  
[PROPOSED] ORDER; AND DECLARATION OF DANIEL T. BALMAT**

was served on:

Jewell J. Hargleroad, Esq.  
Timothy L. McInerney, Esq.  
LeCarie Whitfield, Esq.  
**MCINERNEY & DILLON, P.C.**  
One Kaiser Plaza, 18th Floor  
Oakland, California 94612-3610  
Telephone: +1.510.465.7100  
Facsimile: +1.510.465.8556

**Attorneys for Defendants**

Service was accomplished as follows.

☒ **By U.S. Mail.** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice the mail would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at San Francisco, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **By Facsimile.** On the above date, I transmitted the above-mentioned document(s) by facsimile transmission machine to the parties noted above, whose facsimile transmission machine telephone number is set forth above.

☐ **By Express Service Carrier.** On the above date, I sealed the above document(s) in an envelope or package designated by Federal Express, an express service carrier, addressed to the above, and I deposited that sealed envelope or package in a box or other facility regularly maintained by the express service carrier, or delivered that envelope to an authorized courier or driver authorized by the express service carrier to receive documents, located in San Francisco, California with delivery fees paid or otherwise provided for.

1 I declare that I am employed in the office of a member of the bar of this court at whose  
2 direction the service was made. Executed on August 11, 2005, at San Francisco, California.

/s/

JOHN R. AGUILAR